



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,274	10/17/2001	Ryan Lance Levin	7802-A07-003	8186

33771 7590 11/07/2011

PAUL D. BIANCO

Fleit Gibbons Gutman Bongini & Bianco PL

21355 EAST DIXIE HIGHWAY

SUITE 115

MIAMI, FL 33180

EXAMINER

COBANOGLU, DILEK B

ART UNIT

PAPER NUMBER

3626

MAIL DATE

DELIVERY MODE

11/07/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RYAN LANCE LEVIN, ADRIAN GORE, and NEVILLE
STANLEY KOOPOWITZ

Appeal 2010-008087
Application 09/982,274
Technology Center 3600

Before MURRIEL E. CRAWFORD, BIBHU R. MOHANTY, and
MICHAEL W. KIM, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1 to 10, 12, and 14 to 19. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

The Appellants appeared for oral hearing on October 26, 2011.

We REVERSE.

Claim 1 is illustrative:

1. A method of managing the use of a medical insurance plan by members thereof, the method comprising:

loading member application forms in a computer system managed by an insurance provider, wherein a default setting associated with the medical insurance plan is for all members to be opted-in to receive rewards based on accumulated credit values exceeding predetermined values;

receiving, at the computer system managed by the insurance provider, one of a premium payment and a contribution payment from members of the medical insurance plan, wherein the insurance provider undertakes liability in the medical insurance plan in response to receiving one of the premium payment and the contribution payment;

providing at least one of
relevant health services and
assistance in defraying expenses
incurred in connection with rendering such
relevant health services,

by the computer system managed by the insurance provider to members who pay at least one of the premium payment and the contribution payment;

defining, by the computer system managed by the insurance provider, at least one of a plurality of health-related facilities and a plurality

of health-related services to be associated with the medical insurance plan;

offering, by the computer system managed by the insurance provider, the at least one of a plurality of health-related facilities and a plurality of health-related services to members of the medical insurance plan;

monitoring, by the computer system managed by the insurance provider, usage of the at least one of a plurality of health-related facilities and a plurality of health-related services by each member;

allocating, by the computer system managed by the insurance provider in response to the monitoring, a credit value to each member according to their use of the at least one of a plurality of health-related facilities and a plurality of health-related services; and

allocating, by the computer system managed by the insurance provider, rewards to members who accumulate credit values exceeding predetermined values.

Appellants appeal the following rejections:

1. Claims 1 to 10 and 14 to 19 under 35 U.S.C. § 103(a) as unpatentable over Douglas (US Pat. No. 6,039,688, iss. Mar. 21, 2000), Luchs (US Pat. No. 4,831,526, iss. May 16, 1989), and Appellants' Admitted Prior Art (hereinafter "AAPA").
2. Claim 12 under 35 U.S.C. § 103(a) as unpatentable over Douglas, Luchs, AAPA, and Ballantyne (US Pat. No. 5,867,821, iss. Feb. 2, 1999).

ISSUE

Did the Examiner err in rejecting the claims because Douglas does not disclose the following steps performed by the computer system managed by the insurance provider: (1) offering at least one of a plurality of health-related facilities and (2) monitoring usage of the at least one of a plurality of health-related facilities by each member?

ANALYSIS

New matter objection

We will not reach the issue of whether the amendment filed on February 17, 2009 introduced new matter into the disclosure. A rejection of claims is reviewable by the Board of Patent Appeals and Interferences, whereas an objection is subject to supervisory review by petition under 37 C.F.R. § 1.181. If both the claims and specification contain new matter either directly or indirectly, and there has been both a rejection and objection by the Examiner, the issue becomes appealable and should not be decided by petition. In this case the Examiner has not included a rejection of claims related to new matter. Therefore, review of the objection must be taken via petition.

Prior art rejections

We agree with the Appellants that Douglas does not disclose the following steps performed by the computer system managed by the insurance provider: (1) offering at least one of a plurality of health-related facilities and (2) monitoring usage of the at least one of a plurality of health-related facilities by the members of the insurance plan.

The Examiner relies on column 2, lines 9 to 22, column 5, lines 28 to 34 and column 6, lines 7 to 13 and 40 to 48 for disclosing a computer system managed by the insurance provider offering at least one of a plurality of health-related facilities, and on column 5, lines 28 to 34 and column 7, lines 54 to 65 and column 10, lines 9 to 16 for disclosing monitoring the usage of the facility by the computer system managed by the insurance provider.

We find that Douglas discloses a therapeutic behavior modification program which enables review of the health records by a physician and the health plan payor, and motivates a patient to comply with the program and make necessary lifestyle changes through an integrated system of interactive graphical interfaces (col. 2, ll. 9 to 22; col. 6, ll. 7 to 13). The patient, physician, and health care plan payor can provide input and/or receive output from the system (col. 5, ll. 28 to 34). The system provides reports of the patient's progress to monitor the patient's progress (col. 10, ll. 9 to 16).

Although it is true that Douglas discloses monitoring the progress of the patient, we find that the progress is monitored based on patient and physician input (col. 10, ll. 9 to 16). We find that Douglas does not disclose that the computer system managed by the insurance provider offers a facility or monitors the patient's usage of the facility.

In view of the foregoing, we will not sustain the Examiner's rejection of claim 1 and claims 2 to 10, and 14 to 17 dependent thereon. We will also not sustain the rejection as it is directed to the claim 18 and claim 19 dependent thereon because independent claim 18 includes the requirement that the insurance provider offers the facility and monitors the usage thereof.

We will likewise not sustain the rejection of claim 12 because this claim depends on claim 1, and the Examiner relies on Douglas for teaching that the computer system managed by the insurance provider offers a facility and monitors the patient's usage of the facility.

DECISION

The decision of the Examiner is reversed.

REVERSED

hh